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Book Review. Music & Copyright in America: Toward the Celestial Jukebox by Kevin Parks

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¶20 On January 22, 1807, Jefferson declared Burr guilty of treason in an address to Congress. Through this pronouncement, Jefferson “usurped the role of both the grand jury and the trial jury” (p.177). Instead of marching victorious with a band of hearty soldiers through the Southwest and Mexico, in February 1807 Burr was arrested in the Mississippi Territory. He did not stand trial where his alleged crime took place; he was whisked to Richmond, Virginia, by armed guards. The subsequent trial, *United States v. Burr*,¹¹ generated a series of curious dichotomies in which Newmyer revels. Jefferson’s party, the Democratic-Republicans, opposed an overbearing executive branch, yet here was Jefferson directing Burr’s prosecution from Washington, D.C.; attempting to suspend the writ of habeas corpus; manipulating witnesses with the promise of pardons; and ensuring that Burr did not receive a fair trial by enflaming the partisan press. As a Federalist, Marshall had his own prejudices and intellectual obstacles to overcome. First and foremost, Marshall greatly respected Alexander Hamilton, a Federalist leader whom Burr had killed in a duel. Marshall’s decision defined treason in a manner that limited the government’s prosecutorial reach and, in a very Jeffersonian move, rejected the English common law on this crime.

¶21 In addition to recounting one of the most important trials of the nineteenth century, this book offers up jurisprudential meditations on treason, evidence, and the rule of law. Marshall’s writing style “made no effort to placate the ordinary reader” (p.206); fortunately, that is where Newmyer ably steps in. I was consistently impressed by Newmyer’s ability to transition from historical details to larger issues that reverberated through our legal system over the next two hundred years. The trial was political theater, but it also set this country on a path on which the crime of treason could not be used by political powers to snuff out dissent, defendants would not be tried on their character but on the evidence presented, and the President of the United States was not above the law when it came to a *subpoena duces tecum* issued by a court of competent jurisdiction.

¶22 As a practical matter, this book is well constructed with useful footnotes, helpful illustrations, and an engaging tone. It should be considered for acquisition by academic libraries (both law and general), especially if they serve patrons who focus on early American trials, lawyers, or federalism.

Parks, Kevin. *Music & Copyright in America: Toward the Celestial Jukebox*. Chicago: ABA Publishing, 2012. 239p. \$98, paper.

*Reviewed by Michelle M. Botek**

¶23 *Music & Copyright in America: Toward the Celestial Jukebox* is intellectual property attorney Kevin Parks’s debut book. As much a history of American music as a legal resource, the work chronicles the evolution of music and copyright law over the last two hundred years. The work is divided into seven parts, which, like orchestral movements, thematically and temporally build off one another. The

11. 25 F. Cas. 55 (C.C.D. Va. 1807) (No. 14,693).

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culmination of each part is marked by a transformative development that made a profound impact on the music industry. Parts 1 and 2 cover the period from the nation's inception through the early 1900s, while parts 3 through 5 discuss the middle decades of the twentieth century. The culminating chapters, parts 6 and 7, trace events from the mid-1990s through the Supreme Court's decision in *Golan v. Holder* in 2012.¹²

¶24 Part 1 starts with the inclusion of the Copyright Clause in the United States Constitution and a discussion of early property law notions in America. It goes on to describe the fledging American music industry, characterized by folk songs and sheet-music peddlers. Highlights of this section include an in-depth discussion of the 1831 recognition of musical compositions as copyrightable subject matter and an analysis of how this fostered a surge of entrepreneurialism (and litigation) within the industry. The segment concludes with an exploration of two major pieces of copyright legislation: the International Copyright Act of 1891¹³ and the Cummings Copyright Bill.¹⁴

¶25 Parks then shifts his focus to the exciting technological developments in instrumentation and recording of the twentieth century. These advances include the mechanization of musical performance, like the player piano, and early recording techniques, such as the double phonograph. He exquisitely details the physical machinery and operation of these new technologies. For example, describing the mechanism by which player pianos work, he writes: "The high-tech contraptions magically made music on their own by 'reading' the chad-like perforations, triggering a mechanism that depressed a piano key and rendered a note, all without the touch of a human hand" (p.51). This vividness is representative of Parks's style and beautiful prose throughout the book.

¶26 Part 3 begins with a recap of the substantial revisions to copyright law in the early 1900s, including a revised public performance right. Next, the book looks at the social, legal, and music industry factors leading to the formation of well-known and highly influential licensing organizations such as the American Society of Composers, Authors, and Publishers (ASCAP) and Broadcast Music, Inc. (BMI). Parks then examines the ascendancy of the performers' rights movement of the 1960s and 1970s. As chronologically appropriate, he integrates discussions regarding the increase in technology-enabled infringement, like radio, and piracy risks—through dubbing, sampling, and brick-and-mortar rental clubs—and their effects on copyright policy making. He also covers the explosion of seminal copyright cases between 1920 and 1980 and the impact of the watershed 1976 Copyright Act.¹⁵ The final portion of the text, parts 6 and 7, ushers in a time exceedingly familiar to the vast majority of contemporary readers: the new millennium and the rapid proliferation of technological advances, including the rise of digital music, with its potential for limitless duplication of songs and for file-sharing capabilities, and the ensuing challenges facing traditional copyright conventions.

12. 132 S. Ct. 873 (2012) (allowing restoration of copyright to certain works previously in the public domain).

13. Act of March 3, 1891, ch. 565, 26 Stat. 1106.

14. S. 2306, 54th Cong. (1896) (enacted as Act of Mar. 3, 1897, ch. 392, 29 Stat. 694).

15. Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541.

¶27 Ultimately, *Music & Copyright in America* is a fascinating read for those with an interest in copyright, as well as music lovers and history buffs. The depth of discussion varies, but the text is generally thorough and comprehensible, even for the novice reader. Parks skillfully covers all major legislation, cases, and technical and commercial developments in the field, while allowing his passion for music and law to permeate the text. He relies on reputable sources and frequently cites the preeminent legal scholars in the copyright field. Further, his deft use of statistics and attention-grabbing factoids throughout the book make the material gripping and accessible. References to primary source legal materials are appropriately footnoted, although the origins of his colorful historical references and facts are occasionally unclear. The book's chapter headings range from the pedestrian to the clever; however, on the whole they want for utility, offering scant indication of each portion's content and lacking sufficient descriptiveness to be of meaningful assistance.

¶28 The author incorporates a number of useful features, including a time line denoting key events and a robust index containing important figures, cases, and legislation from the text. Yet there are several unfortunate structural oversights; chiefly, there is no bibliography, and text in the footnotes has not been included in the index. An experienced researcher or scholar may find these omissions both frustrating and limiting. This publication is available only in paperback and suffers from the inherent limitations of its format when it comes to durability. Coupled with its relatively high cost, this should be a consideration for potential purchasers. Its minor shortcomings notwithstanding, with its lively prose and cross-disciplinary focus *Music & Copyright in America* is suitable for any academic library, and its popular appeal should not be overlooked.

Raustiala, Kal, and Christopher Sprigman. *The Knockoff Economy: How Imitation Sparks Innovation*. New York: Oxford University Press, 2012. 272p. \$27.95.

*Reviewed by Michelle Humphries**

¶29 In *The Knockoff Economy: How Imitation Sparks Innovation*, Kal Raustiala, a professor at UCLA Law School who specializes in intellectual property and international law, and Christopher Sprigman, a professor at the University of Virginia School of Law who specializes in intellectual property, antitrust, and constitutional law, argue that copying is not necessarily the evil that it is made out to be.

¶30 Copyright law protects against some copying by others. Raustiala and Sprigman describe this basic tenet as “the *monopoly theory* of innovation” (p.6): copyright law protects against copying because copying would “destroy the incentive to innovate in the first place” (p.168). However, the authors argue that it is not quite that simple. In some situations, copying has little or no effect on innovation, or it can actually cause more innovation. The big question is “when—and why—this is true” (*id.*).

¶31 To answer this question, Raustiala and Sprigman analyze fashion, cooking, comedy, and other creative industries where copyright protection is not available

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